

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

NAUTILUS INSURANCE COMPANY,

Petitioner,

vs.

Richard Alexander Murdaugh, Sr., Cory
Fleming, MOSS & KUHN, P.A., Chad
Westendorf, and PALMETTO STATE BANK,

Respondents.

Civil Action No. 2:22-cv-1307-RMG

**RESPONDENT CORY FLEMING'S
ANSWER TO PETITIONER'S
SECOND AMENDED COMPLAINT**

The Respondent, Cory Fleming (hereinafter “Mr. Fleming”), hereby answers the Second Amended Complaint filed on behalf of NAUTILUS INSURANCE COMPANY (“Nautilus” or “Petitioner”) subject to all affirmative defenses, motions, and any other pleadings, as follows:

1. Mr. Fleming denies each and every allegation of the Petitioner’s Second Amended Complaint that is not specifically admitted.

PARTIES AND JURISDICTION

2. The allegations in Paragraphs 1 and 2 are admitted upon information and belief.

3. The allegations in Paragraphs 3 and 4 are admitted.

4. The allegations in Paragraphs 5 and 6 are admitted upon information and belief.

5. The allegations in Paragraphs 7 and 8 are legal conclusions requiring no response from Mr. Fleming. To the extent the Court requires a response, Mr. Fleming admits this Court has jurisdiction under 28 U.S.C. § 1332; admits this Court has jurisdiction under 28 U.S.C. § 2201; and admits this Court has jurisdiction under 28 U.S.C. § 1367 and 18 U.S.C. § 1964, provided the facts alleged in the

Petitioner's jurisdictional allegations are true.

FACTUAL ALLEGATIONS

6. In response to the factual allegations in Paragraphs 10 – 19, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

FOR A FIRST CAUSE OF ACTION
(Fraud – Murdaugh)

7. In response to the allegations in Paragraph 20, Mr. Fleming incorporates his response to the foregoing paragraphs as if repeated here verbatim.

8. In response to the allegations in Paragraphs 21 – 26, including sub-parts, and notwithstanding the allegations are directed to another Defendant, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

FOR A SECOND CAUSE OF ACTION
(Conspiracy - All Defendants)

9. In response to the allegations in Paragraph 27, Mr. Fleming incorporates his response to the foregoing paragraphs as if repeated here verbatim.

10. In response to the allegations in Paragraphs 28 – 34, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

FOR A THIRD CAUSE OF ACTION
(Negligence - Palmetto)

11. In response to the allegations in Paragraph 35, Mr. Fleming incorporates his response to the foregoing paragraphs as if repeated here verbatim.

12. In response to the allegations in Paragraphs 36 – 47, including sub-parts, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

FOR A FOURTH CAUSE OF ACTION
(South Carolina Unfair Trade Practices Act – All Defendants)

13. In response to the allegations in Paragraph 48, Mr. Fleming incorporates his response to the foregoing paragraphs as if repeated here verbatim.

14. In response to the allegations in Paragraphs 49 – 54, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

FOR A FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty – Fleming, MKF, Westendorf, and Palmetto)

15. In response to the allegations in Paragraph 55, Mr. Fleming incorporates his response to the foregoing paragraphs as if repeated here verbatim.

16. In response to the allegations in Paragraphs 56 – 64, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

FOR A SIXTH CAUSE OF ACTION
(Breach of Agreement – Fleming, MKF, Westendorf, and Palmetto)

17. In response to the allegations in Paragraph 65, Mr. Fleming incorporates his response to the foregoing paragraphs as if repeated here verbatim.

18. In response to the allegations in Paragraphs 66 – 70, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

FOR A SEVENTH CAUSE OF ACTION
(Aiding and Abetting Breach of Fiduciary Duty – Fleming, MKF, Westendorf, and Palmetto)

19. In response to the allegations in Paragraph 71, Mr. Fleming incorporates his response to the foregoing paragraphs as if repeated here verbatim.

20. In response to the allegations in Paragraphs 72 – 74, including sub-parts, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

FOR A EIGHTH CAUSE OF ACTION
(Aiding and Abetting Fraud – Fleming, MKF, Westendorf, and Palmetto)

21. In response to the allegations in Paragraph 75, Mr. Fleming incorporates his response to the foregoing paragraphs as if repeated here verbatim.

22. In response to the allegations in Paragraphs 62 – 80, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

FOR A NINTH CAUSE OF ACTION
(Money Had and Received/Unjust Enrichment – Murdaugh, Fleming, MKF, Westendorf, and Palmetto)

23. In response to the allegations in Paragraph 81, Mr. Fleming incorporates his response to the foregoing paragraphs as if repeated here verbatim.

24. In response to the allegations in Paragraphs 82 – 86, including sub-parts, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

FOR A TENTH CAUSE OF ACTION
(Conversion – All Defendants)

25. In response to the allegations in Paragraph 87 Mr. Fleming incorporates his response to the foregoing paragraphs as if repeated here verbatim.

26. In response to the allegations in Paragraphs 88 – 96, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

FOR A ELEVENTH CAUSE OF ACTION
(Conversion – All Defendants)

27. In response to the allegations in Paragraph 97 Mr. Fleming incorporates his response to the foregoing paragraphs as if repeated here verbatim.

28. In response to the allegations in Paragraphs 98 – 101, including sub-parts, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

FOR A TWELFTH CAUSE OF ACTION
**(Violation of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1962(a)–
(d) – All Defendants)**

29. In response to the allegations in Paragraph 102 Mr. Fleming incorporates his response to the foregoing paragraphs as if repeated here verbatim.

30. In response to the allegations in Paragraphs 103 – 116, including sub-parts, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

FOR A THIRTEENTH CAUSE OF ACTION
(Negligence – MFK)

31. In response to the allegations in Paragraph 117 Mr. Fleming incorporates his response to the foregoing paragraphs as if repeated here verbatim.

32. In response to the allegations in Paragraphs 118 – 133, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

FOR A FOUTEENTH CAUSE OF ACTION
(Declaratory Judgment)

33. In response to the allegations in Paragraph 135 Mr. Fleming incorporates his response to the foregoing paragraphs as if repeated here verbatim.

34. In response to the allegations in Paragraph 135, and in the Petitioner's WHEREFORE paragraph, Mr. Fleming invokes his rights under the Fifth Amendment to the United States Constitution not to respond to any of these allegations because there are pending criminal indictments against Mr. Fleming concerning these matters.

AS AN AFFIRMATIVE DEFENSE
(Statute of Limitations)

35. Petitioner's actions against Mr. Fleming are barred by the applicable statute of limitations.

AS AN AFFIRMATIVE DEFENSE
(No Damages)

36. Petitioner's actions against Mr. Fleming are barred because Nautilus suffered no damages.

AS AN AFFIRMATIVE DEFENSE
(No Duty)

37. Petitioner's actions against Mr. Fleming are barred because Mr. Fleming owed no duty to Nautilus.

AS AN AFFIRMATIVE DEFENSE
(No Causation)

38. Petitioner's actions against Mr. Fleming are barred because Nautilus cannot show any damages causally related to any acts or omissions by Mr. Fleming, including lack of proximate cause and lack of cause-in-fact.

AS AN AFFIRMATIVE DEFENSE
(Failure to Allege Fraud with Particularity)

39. Petitioner's actions against Mr. Fleming for fraud are barred because the allegations in the Second Amended Complaint fail to allege the circumstances constituting fraud with particularity.

AS AN AFFIRMATIVE DEFENSE
(Independent Act of Third Party)

40. Petitioner's actions against Mr. Fleming are barred because claims and events in the Second Amended Complaint were the result of acts of a third party independent of Mr. Fleming, and as such cannot be attributed to Mr. Fleming.

AS AN AFFIRMATIVE DEFENSE
(Civil Conspiracy Claim Defective)

41. Petitioner's actions against Mr. Fleming for civil conspiracy are barred because the Second Amended Complaint fails to allege specific acts in furtherance of the alleged conspiracy in addition to the allegations claimed to support other causes of action.

AS AN AFFIRMATIVE DEFENSE
(Waiver, Estoppel, and Laches)

42. Petitioner's actions against Mr. Fleming are barred in whole or in part under the doctrines of waiver, estoppel, and laches.

AS AN AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

43. Petitioner's actions against Mr. Fleming are barred in whole or in part because Petitioner failed to take reasonable measures or otherwise adequately mitigate its alleged damages, if any damages exist.

AS AN AFFIRMATIVE DEFENSE
(Failure to State a Claim)

44. The allegations in the Amended Complaint fail to state a claim upon which relief may be granted against Mr. Fleming.

AS AN AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional)

45. Any award or assessment of punitive damages as prayed for by Petitioner would violate Mr. Fleming's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

AS AN AFFIRMATIVE DEFENSE
(Statutory Punitive Damages Cap)

46. Any award or assessment of punitive damages as prayed for by Petitioner must be capped and cannot exceed the amounts set forth in S.C. CODE ANN. §15-32-530, et seq., as amended.

WHEREFORE, having fully answered the Petitioner's Second Amended Complaint, and having asserted these affirmative defenses, Respondent, Cory Fleming, prays that Petitioner's Second Amended Complaint be dismissed with prejudice and that he be awarded the costs and reasonable fees associated with this matter, and such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Thomas A. Pendarvis
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Beaufort, South Carolina
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